



2009 ASSEMBLY BILL 367

August 12, 2009 – Introduced by Representatives HIXSON, BERCEAU, GRIGSBY, TOLES, HINTZ, ZEPNICK, POPE-ROBERTS, SCHNEIDER, PARISI, PASCH, A. WILLIAMS, TURNER, FIELDS and HILGENBERG, cosponsored by Senators TAYLOR and COGGS. Referred to Committee on Workforce Development.

1 **AN ACT** *to amend* 111.31 (1), 111.31 (2), 111.31 (3) and 111.321; and *to create*
2 111.32 (3g) and 111.333 of the statutes; **relating to:** employment
3 discrimination based on credit history.

Analysis by the Legislative Reference Bureau

Current law prohibits discrimination in employment on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, military service, or use or nonuse of a lawful product off the employer's premises during nonworking hours. Current law also specifies that employment discrimination because of arrest record includes requesting an individual to supply information regarding any arrest record, except when employment depends on the bondability of the individual, and that employment discrimination because of conviction record does not include refusing to employ an individual who has been convicted of an offense the circumstances of which substantially relate to the circumstances of the particular job or who is not bondable when employment depends on the bondability of the individual.

This bill prohibits employment discrimination based on credit history. The bill specifies that employment discrimination because of credit history includes an employer, labor organization, employment agency, licensing agency, or other person requesting an applicant, employee, member, licensee, or any other individual, on an application form or otherwise, to authorize that person to procure the individual's credit history, except that it is not employment discrimination to request that authorization: 1) if the circumstances of an individual's credit history are

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substantially related to the circumstances of a particular job or licensed activity; or 2) if employment, membership, or licensing depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating. The bill also specifies that it is not employment discrimination because of credit history to refuse to employ, admit, or license, or to bar or terminate from employment, membership, or licensing, any individual if: 1) the circumstances of an individual's credit history are substantially related to the circumstances of the particular job; or 2) if the individual is not bondable when bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

Under the bill, “credit history” means information provided in a consumer report under the federal Fair Credit Reporting Act (FCRA), which defines “consumer report” as any written, oral, or other communication by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used as a factor in establishing the individual's eligibility for credit, insurance, employment, or any other purpose allowed under federal law. The FCRA further defines “consumer reporting agency” as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on individuals for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.31 (1) of the statutes is amended to read:

111.31 (1) The legislature finds that the practice of unfair discrimination in employment against properly qualified individuals by reason of their age, race, creed, color, disability, marital status, sex, national origin, ancestry, sexual orientation, arrest record, conviction record, credit history, military service, or use or nonuse of lawful products off the employer's premises during nonworking hours substantially and adversely affects the general welfare of the state. Employers, labor organizations, employment agencies, and licensing agencies that deny employment opportunities and discriminate in employment against properly

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1 qualified individuals solely because of their age, race, creed, color, disability, marital
2 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction
3 record, credit history, military service, or use or nonuse of lawful products off the
4 employer's premises during nonworking hours deprive those individuals of the
5 earnings that are necessary to maintain a just and decent standard of living.

6 **SECTION 2.** 111.31 (2) of the statutes is amended to read:

7 111.31 (2) It is the intent of the legislature to protect by law the rights of all
8 individuals to obtain gainful employment and to enjoy privileges free from
9 employment discrimination because of age, race, creed, color, disability, marital
10 status, sex, national origin, ancestry, sexual orientation, arrest record, conviction
11 record, credit history, military service, or use or nonuse of lawful products off the
12 employer's premises during nonworking hours, and to encourage the full,
13 nondiscriminatory utilization of the productive resources of the state to the benefit
14 of the state, the family, and all the people of the state. It is the intent of the legislature
15 in promulgating this subchapter to encourage employers to evaluate an employee or
16 applicant for employment based upon the ~~employee's or applicant's~~ individual
17 qualifications of the employee or applicant rather than upon a particular class to
18 which the individual may belong.

19 **SECTION 3.** 111.31 (3) of the statutes is amended to read:

20 111.31 (3) In the interpretation and application of this subchapter, and
21 otherwise, it is declared to be the public policy of the state to encourage and foster
22 to the fullest extent practicable the employment of all properly qualified individuals
23 regardless of age, race, creed, color, disability, marital status, sex, national origin,
24 ancestry, sexual orientation, arrest record, conviction record, credit history, military
25 service, or use or nonuse of lawful products off the employer's premises during

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1 nonworking hours. Nothing in this subsection requires an affirmative action
2 program to correct an imbalance in the work force. This subchapter shall be liberally
3 construed for the accomplishment of this purpose.

4 **SECTION 4.** 111.32 (3g) of the statutes is created to read:

5 111.32 (3g) “Credit history” means information provided in a consumer report,
6 as defined in 15 USC 1681a (d).

7 **SECTION 5.** 111.321 of the statutes is amended to read:

8 **111.321 Prohibited bases of discrimination.** Subject to ss. 111.33 to 111.36,
9 no employer, labor organization, employment agency, licensing agency, or other
10 person may engage in any act of employment discrimination as specified in s. 111.322
11 against any individual on the basis of age, race, creed, color, disability, marital
12 status, sex, national origin, ancestry, arrest record, conviction record, credit history,
13 military service, or use or nonuse of lawful products off the employer’s premises
14 during nonworking hours.

15 **SECTION 6.** 111.333 of the statutes is created to read:

16 **111.333 Credit history; exceptions and special cases. (1)** Employment
17 discrimination because of credit history includes an employer, labor organization,
18 employment agency, licensing agency, or other person requesting an applicant,
19 employee, member, licensee, or any other individual, on an application form or
20 otherwise, to authorize that person to procure the individual’s credit history, except
21 that it is not employment discrimination to request that authorization if any of the
22 following apply:

23 (a) The circumstances of an individual’s credit history are substantially related
24 to the circumstances of a particular job or licensed activity.

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(b) Employment, membership, or licensing depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, administrative regulation, or established business practice of the employer and the individual may not be bondable due to his or her credit history.

(2) Notwithstanding s. 111.322, it is not employment discrimination because of credit history to refuse to employ, admit, or license, or to bar or terminate from employment, membership, or licensing, any individual if any of the following apply:

(a) The circumstances of the individual's credit history are substantially related to the circumstances of the particular job or licensed activity.

(b) The individual is not bondable under a standard fidelity bond or an equivalent bond when that bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

SECTION 7. Initial applicability.

(1) This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

(END)